

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

REGAL FABRICS, INC.,

Plaintiff,

v.

KOBA, INC., an Illinois corporation;  
IBR CORPORATION, d/b/a Harbortown Division,  
an Illinois corporation; and  
SHOPKO STORES, INC, a Wisconsin corporation,

Defendants.

CIVIL ACTION

NO. MAGISTRATE JUDGE Dein**04-10961 RWZ**

RECEIPT # 55891  
 AMOUNT \$ 100  
 SUMMONS ISSUED 3  
 LOCAL RULE 4.1 \_\_\_\_\_  
 WAIVER FORM \_\_\_\_\_  
 MCF ISSUED 78  
 BY DPTY. CLK. 78  
 DATE 5-14-04

**COMPLAINT AND JURY DEMAND**

Plaintiff Regal Fabrics, Inc. ("Regal"), by its undersigned attorneys, Bingham McCutchen LLP, for its Complaint herein, alleges, upon knowledge as to itself and otherwise upon information and belief, as follows:

**Parties**

1. Regal is a privately held corporation duly organized under the laws of Massachusetts, with a principal place of business in Middleton, Massachusetts.
2. Koba, Inc. ("Koba") is an Illinois corporation with its principal place of business in Illinois.

3. Shopko Stores, Inc. ("Shopko") is a publicly traded corporation incorporated under the laws of the State of Wisconsin, and having its principal place of business within that state.

4. IBR Corporation, d/b/a as Harbortown Division ("Harbortown"), is a corporation organized under the laws of the State of Illinois, and having its principal place of business within that state.

### **Jurisdiction and Venue**

5. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1338(a), in that this case arises under the copyright laws of the United States, 17 U.S.C. §§ 101 *et seq.*

6. This Court also has original jurisdiction of this action under 28 U.S.C. § 1332, in that the plaintiff, a Massachusetts corporation with its principal place of business in that state, is a citizen of Massachusetts, and the defendants are citizens of Illinois and Wisconsin, and the amount in controversy in this action, exclusive of interest and costs, exceeds \$75,000.

7. This Court has supplemental jurisdiction of the state law claim alleged in Count II under 28 U.S.C. § 1337(a).

8. Venue is proper in this District under 28 U.S.C. § 1331(c) in that Defendants conduct business in this District and at least part of the events giving rise to the claims stated herein occurred in this District. Venue is also proper in this District under 28 U.S.C. § 1400(a) in that this action arises under the copyright

laws of the United States, 17 U.S.C. §§ 101 *et seq.* and Defendants may be found in this District.

### **Claim For Relief**

#### **Count I: Copyright Infringement**

9. Regal is a converter of woven textile fabrics for use in connection with home furnishings and furniture that reflect original, copyright-protected patterns and fabric constructions that are designed and developed by Regal and in which Regal owns the copyrights.

10. Regal is the owner of all right, title and interest, including the copyright, in and to the original textile design designated "R6711 Multi" (the "Work"). A color photocopy of the Work is attached hereto as **Exhibit A**.

11. The Work contains wholly original material and constitutes copyrightable subject matter under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, as amended.

12. The Work is the subject of a Certificate of Copyright Registration issued by the Register of Copyrights on August 14, 2001, bearing registration number VA 1-092-293. A copy of the Certificate of Copyright Registration is attached as **Exhibit B**.

13. Regal also owns the rights to three additional textile patterns, identical in all respects to the Work but color, and designated "R7201 Sand," "R8133 Multi," and "R6788 Sand." Color photocopies of these designs are attached as **Exhibit C**.

14. In all respects, the laws of the United States and all other laws governing copyright have been complied with as respects the Work, and Regal has secured the rights and privileges under the copyright in the Work.

15. Harbortown manufactures finished goods, including futon mattresses, incorporating fabrics and textiles. In June, July and October 2002, Harbortown purchased fabric incorporating the Work from Regal. The invoices for these purchases are attached as **Exhibit D**.

16. On information and belief, Harbortown thereafter solicited Koba to manufacture fabric infringing Regal's copyright of the Work. Koba is a manufacturer of fabrics for home furnishings.

17. Koba agreed to and did manufacture fabric infringing Regal's copyright of the Work, which it then sold to Harbortown.

18. Harbortown incorporated the infringing fabric into, *inter alia*, futon mattresses, which it sold to Shopko. Shopko owns and operates retail stores that sell, *inter alia*, home furnishings.

19. Shopko sold the infringing products to consumers in its retail stores throughout the United States.

20. Koba has knowingly and willfully infringed, and threatens to further infringe, Regal's rights in and to the Work by, *inter alia*, selling, offering for sale and otherwise distributing goods incorporating unauthorized copies of the Work and creating unauthorized derivative works thereof in violation of its rights pursuant to

17 U.S.C. § 106. Specifically, Koba has sold, offered for sale and distributed infringing fabric reflecting a design that is substantially similar to the Work.

21. Harbortown has knowingly and willfully infringed, and threatens to further infringe, Regal's rights in and to the Work by, *inter alia*, selling, offering for sale and otherwise distributing goods incorporating unauthorized copies of the Work and creating unauthorized derivative works thereof in violation of its rights pursuant to 17 U.S.C. § 106. Specifically, Harbortown has sold, offered for sale and distributed infringing fabric reflecting a design that is substantially similar to the Work.

22. Shopko has knowingly and willfully infringed, and threatens to further infringe, Regal's rights in and to the Work by, *inter alia*, selling, offering for sale and otherwise distributing goods incorporating unauthorized copies of the Work and creating unauthorized derivative works thereof in violation of its rights pursuant to 17 U.S.C. § 106. Specifically, Shopko has sold, offered for sale and distributed infringing fabric reflecting a design that is substantially similar to the Work.

23. The aforesaid infringements by Defendants of Regal's rights in and to the Work, and under the copyright relating thereto, were, and continue to be, done with the full knowledge of or with reckless disregard of Regal's rights in and to the Work under the Copyright Act.

24. By reason of Defendants' aforesaid infringements of Regal's rights, Regal has been seriously and irreparably damaged and, unless Defendant is restrained, Regal will continue to be irreparably damaged.

25. Regal has no adequate remedy at law for the damage inflicted by Defendants.

**COUNT II: Violation of Chapter 93A**

26. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

27. The conduct of each of the Defendants constitutes unfair and deceptive trade practices as defined by Mass. Gen. L. Ch. 93A, § 2.

28. Defendants' unfair and deceptive trade practices have been willful and knowing.

29. Plaintiff has been injured by Defendants' unfair and deceptive trade practices.

WHEREFORE, Regal prays for judgment from this Court as follows:

A. Enjoining Defendants and any of their agents, representatives and all other persons acting in concert with them from further infringing or otherwise violating Regal's rights in and to the Work.

B. Directing Defendants to deliver up for destruction all unauthorized copies of the Work and any derivative works based thereon pursuant to 17 U.S.C. § 503.

C. That an accounting and judgment be rendered against Defendants for:

(1) all profits received from the use, distribution or sale of infringing copies or derivative works of the Work, as provided by 17 U.S.C. § 504(b);

(2) all actual damages suffered by Regal as a result of Defendant's copyright infringement, as provided by 17 U.S.C. § 504(b);

(3) statutory damages for copyright infringement by Defendant, as allowable under 17 U.S.C. § 504(c), if such amounts are greater than the combined amounts of (1) and (2) above; and

(4) an increase of statutory damages on account of Defendants' knowing and willful infringements of Regal's rights in and to the Work pursuant to 17 U.S.C. § 504(c)(2).

D. For an award of up to treble damages pursuant to Mass. Gen. L. Ch. 93A, § 9(2).

E. For an award of costs in this action, including reasonable attorneys' fees and expert fees as allowable under 17 U.S.C. § 505 and M.G.L. c. 93A; and

F. Such other and further relief as the Court deems just, proper and equitable.

**Demand For Jury Trial**

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demands a jury trial as to all issues triable by a jury.

Dated: Boston, Massachusetts  
May 13, 2004

**REGAL FABRICS, INC.,**

By its attorneys,



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Richard S. Taffet, BBO #1721182  
Victor H. Polk, Jr., BBO #546099  
**BINGHAM McCUTCHEN LLP**  
150 Federal Street  
Boston, Massachusetts 02110  
Tel: (617) 951-8000

*Attorneys for Plaintiff  
Regal Fabrics, Inc.*

**REGAL**  
FABRICS INC.

PATTERN: R6711 MULTI

56% COTTON  
44% POLYESTER

CONTENTS:

Across the Roll: 14.0 "  
In the Roll:  
11.5 " Manta. 54 "



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

**ORM VA**  
For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

VA 1-092-293

PU6001092293

EFFECTIVE DATE OF REGISTRATION

08

14

01

Month

Day

Year

REGISTER OF COPYRIGHTS  
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

## TITLE OF THIS WORK ▼

R6711

NATURE OF THIS WORK ▼ See Instructions

## FABRIC DESIGN

## PREVIOUS OR ALTERNATIVE TITLES ▼

TETON ICEBERG R6712

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

## NAME OF AUTHOR ▼

a REGAL FABRICS, INC.

Was this contribution to the work a "work made for hire"?

 Yes  
 No
 

Author's Nationality or Domicile

Name of Country

OR Citizen of ► MASSACHUSETTS

Domiciled in ► USA

## DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

## Was This Author's Contribution to the Work

Anonymous?  Yes  No If the answer to either of these questions is "Yes," see detailed instructions.  
 Pseudonymous?  Yes  No

## NATURE OF AUTHORSHIP Check appropriate box(es). See Instructions

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> 3-Dimensional sculpture          | <input type="checkbox"/> Map            | <input type="checkbox"/> Technical drawing  |
| <input checked="" type="checkbox"/> 2-Dimensional artwork | <input type="checkbox"/> Photograph     | <input type="checkbox"/> Text               |
| <input type="checkbox"/> Reproduction of work of art      | <input type="checkbox"/> Jewelry design | <input type="checkbox"/> Architectural work |

## NAME OF AUTHOR ▼

b Was this contribution to the work a "work made for hire"?

 Yes  
 No
 

Author's Nationality or Domicile

Name of Country

OR Citizen of ►

Domiciled in ►

## DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

## Was This Author's Contribution to the Work

Anonymous?  Yes  No If the answer to either of these questions is "Yes," see detailed instructions.  
 Pseudonymous?  Yes  No

## NATURE OF AUTHORSHIP Check appropriate box(es). See Instructions

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> 3-Dimensional sculpture     | <input type="checkbox"/> Map            | <input type="checkbox"/> Technical drawing  |
| <input type="checkbox"/> 2-Dimensional artwork       | <input type="checkbox"/> Photograph     | <input type="checkbox"/> Text               |
| <input type="checkbox"/> Reproduction of work of art | <input type="checkbox"/> Jewelry design | <input type="checkbox"/> Architectural work |

**NOTE**  
 Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see Instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

**3**  
a Year in Which Creation of This Work Was Completed  
2000

This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work

Complete this information Month ► 12  
ONLY if this work has been published.

Day ► 20 Year ► 2000  
USA

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

REGAL FABRICS, INC.

14 BIRCH ROAD PO BOX 908  
MIDDLETON MA 01949-2908

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE  
OFFICE USE ONLY

APPLICATION RECEIVED

AUG 14 2001

ONE DEPOSIT RECEIVED

AUG 14 2001

TWO DEPOSITS RECEIVED

FUND RECEIVED

DO NOT WRITE HERE

Page 1 of 2 pages

MORE ON BACK ▶

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.

Sign the form at line 8.

**REGAL**  
FABRICS INC.

PATTERN: R7201 SAND

CONTENTS:  
56% COTTON  
44% POLYESTER



PATTERN: R8133 MULTI

CONTENTS:  
56% COTTON  
44% POLYESTER

Across the Roll: 13.5 " MADE IN ITA  
Up the Roll: 14.9 " WIDTH: 54  
SHOWN RAILROADED





14 BIRCH ROAD, P.O. BOX 908  
MIDDLETON, MA 01949-2908  
TEL. (978) 777-6868 FAX (978) 777-9901  
customer.service@regalfabrics.com  
www.regalfabrics.com

## INVOICE

INVOICE NUMBER: INV00051575

INVOICE DATE: 6/17/2002

PAGE: 1

SOLD TO: HARBORTOWN  
4800 WEST ROOSEVELT  
  
CHICAGO IL 60644

SHIP TO: HARBORTOWN  
ATTN: PETER CRANE  
4800 WEST ROOSEVELT  
CHICAGO IL 60644

F.O.B.: MIDDLETON, MA, USA  
SHIP VIA: UPS  
SHIP DATE: 6/17/2002  
DUE DATE: 7/17/2002  
TERMS: Net 30 Days

CUST. I.D.: H1561  
P.O. NUMBER:  
P.O. DATE:  
OUR ORDER NO.: ORD00047033  
SALESPERSON: Garber

| ITEM ID/DESC. | ORDERED | SHIPPED | UNIT  | PRICE  | NET     | TX |
|---------------|---------|---------|-------|--------|---------|----|
| R6788 SAND    |         | 6.00    | YARDS | \$5.95 | \$35.70 |    |

P A I D  
8/27/02  
\$ 56.29 ✓

THIS ACCOUNT HAS BEEN ASSIGNED AND IS PAYABLE TO:  
GE CAPITAL COMMERCIAL SERVICES  
P.O. BOX 402325, ATLANTA, GA 30384-2325

|           |         |
|-----------|---------|
| SUBTOTAL: | \$35.70 |
| FREIGHT:  | \$5.61  |
| MISC:     | \$0.00  |
| PAYMENTS: | \$0.00  |
| TOTAL:    | \$41.31 |



14 BIRCH ROAD, P.O. BOX 908  
MIDDLETON, MA 01949-2908  
TEL. (978) 777-6868 FAX (978) 777-9901  
customer.service@regalfabrics.com  
www.regalfabrics.com

## INVOICE

INVOICE NUMBER: INV00052651

INVOICE DATE: 7/24/2002

PAGE: 1

SOLD TO: HARBORTOWN  
4800 WEST ROOSEVELT  
  
CHICAGO IL 60644

SHIP TO: HARBORTOWN  
ATTN: PETER CRANE  
4800 WEST ROOSEVELT  
CHICAGO IL 60644

|            |                    |                |             |
|------------|--------------------|----------------|-------------|
| F.O.B.:    | MIDDLETON, MA, USA | CUST. I.D.:    | H1561       |
| SHIP VIA:  | UPS                | P.O. NUMBER:   | 388343      |
| SHIP DATE: | 7/24/2002          | P.O. DATE:     |             |
| DUE DATE:  | 8/23/2002          | OUR ORDER NO.: | ORD00047943 |
| TERMS:     | Net 30 Days        | SALESPERSON:   | Garber      |

| ITEM I.D./DESC.                                      | ORDERED | SHIPPED | UNIT  | PRICE  | NET      | TX |
|--|---------|---------|-------|--------|----------|----|
| R6788 SAND   |         | 56.75   | YARDS | \$4.95 | \$280.91 |    |
| SPECIAL PRICING                                      |         |         |       |        |          |    |
| FUTURE ORDERS FOR R7201 SAND (RR)                    |         |         |       |        |          |    |
| MINIMUM 2,000 YARDS                                  |         |         |       |        |          |    |
| <b>P A I D</b><br><u>9/30/02</u><br><b>\$ 382.34</b> |         |         |       |        |          |    |

THIS ACCOUNT HAS BEEN ASSIGNED AND IS PAYABLE TO:  
GE CAPITAL COMMERCIAL SERVICES  
P.O. BOX 402325, ATLANTA, GA 30384-2325

|           |          |
|-----------|----------|
| SUBTOTAL: | \$280.91 |
| FREIGHT:  | \$18.99  |
| MISC:     | \$0.00   |
| PAYMENTS: | \$0.00   |
| TOTAL:    | \$299.90 |

ALLUR CORP. 7739 405  
HARBORTOWN DIVISION/IBR CORP.  
PURCHASE ORDER

Number : 1005927  
Account: REGAL FAB

Order Placed With:  
REGAL FABRICS INC  
14 BIRCH ROAD  
P.O. BOX 908  
MIDDLETON, MA 01949-2908

Date: 08/29/2002  
Page: 1

Ship To:  
HARBORTOWN DIVISION/IBR CORP.  
4800 WEST ROOSEVELT ROAD  
CHICAGO, IL 60644

1400

| Description   | Need By | Last Date | Vend SO # | Shipping Instructions |
|---------------|---------|-----------|-----------|-----------------------|
| SO #: 1005927 |         |           |           |                       |

| Our Item #/Qty               | Description/Item Number  | Price    | Disc % | Amount     |
|------------------------------|--|----------|--------|------------|
| ABBERYMOOSE1<br>230.000 YARD | FAB PRINT BERRY MOOSE<br>FABBERYMOOSE1   | \$4.9500 | 0.000  | \$1,138.50 |
| R8133                        | *****<br>PACKING LIST MUST<br>HAVE PO# & YDS<br>*****<br>DO NOT DELIVER BETWEEN<br>12:00P TO 1:00P |          |        |            |

8/

WSH

fall

|   |                    |                |            |
|---|--------------------|----------------|------------|
| Terms:  | Tax Exempt Number: | Disc. ( 0.00 ) | \$0.00     |
| Net 60 Days   | 1169-9620          | Subtotal       | \$1,138.50 |
| Bill To:  |                    | Tax ( 0.00 % ) | \$0.00     |
| HARBORTOWN DIVISION/IBR CORP.<br>4800 WEST ROOSEVELT ROAD |                    | Less Deposit   | \$0.00     |
| CHICAGO, IL 60644   |                    | Order Amount   | \$1,138.50 |

Requested By : PETER  
Authorization:

AC



14 BIRCH ROAD, P.O. BOX 908  
MIDDLETON, MA 01949-2908  
TEL. (978) 777-6868 FAX (978) 777-9901  
customer.service@regalfabrics.com  
www.regalfabrics.com

## INVOICE

INVOICE NUMBER: INV00055841

INVOICE DATE: 10/25/2002

PAGE: 1

SOLD TO: HARBORTOWN  
4800 WEST ROOSEVELT  
  
CHICAGO IL 60644

SHIP TO: HARBORTOWN  
ATTN: PETER CRANE  
4800 WEST ROOSEVELT  
CHICAGO IL 60644

F.O.B.: MIDDLETON, MA, USA  
SHIP VIA: UPS ON 4.  
SHIP DATE: 10/25/2002  
DUE DATE: 11/24/2002  
TERMS: Net 30 Days

CUST. I.D.: H1561  
P.O. NUMBER: 1005927  
P.O. DATE:  
OUR ORDER NO.: ORD00048941  
SALESPERSON: Garber

| ITEM I.D./DESC.  | ORDERED | SHIPPED | UNIT  | PRICE  | NET        | TX |
|--|---------|---------|-------|--------|------------|----|
| R8133 MULTI<br>55.00, 54.75, 55.25, 55.50<br>FAB PRINT BERRY MOOSE |         | 220.50  | YARDS | \$4.95 | \$1,091.48 |    |



PAID  
10/29/03

\$1242.04

THIS ACCOUNT HAS BEEN ASSIGNED AND IS PAYABLE TO:  
GE CAPITAL COMMERCIAL SERVICES  
P.O. BOX 402325, ATLANTA, GA 30384-2325

|           |            |
|-----------|------------|
| SUBTOTAL: | \$1,091.48 |
| FREIGHT:  | \$69.59    |
| MISC.:    | \$0.00     |
| PAYMENTS: | \$0.00     |
| TOTAL:    | \$1,161.07 |